

SETTLEMENT AGREEMENT
BETWEEN MISSOURI BOARD OF PHARMACY
AND ASHTON FREEMAN

Comes now Ashton Freeman ("Licensee") and the Missouri State Board of Pharmacy ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's intern license to practice pharmacy will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to

him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his intern license, along with citations to the law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's intern license, numbered 2007024408 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, as amended and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW

1. The Missouri Board of Pharmacy ("Board") is an agency of the State of Missouri created and established pursuant to § 338.110, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Ashton Freeman ("Licensee") is licensed by the Board as an intern pharmacist, License No. 2007024408. Licensee's intern license is and was current and active at all times relevant herein.

3. Licensee was enrolled at the University of Missouri – Kansas City School of Pharmacy ("UMKC") from August 20, 2006 through May 19, 2008.

4. At all times relevant herein, Licensee was employed as an intern pharmacist at Walgreens located at Kansas City, Missouri.

5. Licensee worked at three different Walgreen's pharmacies in Kansas City, Missouri.

6. On or about April 13, 2008, Licensee was working as an intern pharmacist at Walgreens Pharmacy No. 4210 located at 63rd and Troost, Kansas City, Missouri. Licensee misappropriated the following controlled substances from Store 4210:

- 600 Hydrocodone/apap 10/50
- 400 Hydrocodone/apap 10/325
- 800 Alprazolam 2mg
- 200 Oxycodone/apap 5/325
- 200 Oxycodone 80mg

7. On or about April 18, 2008, Licensee was working as an intern pharmacist at the Walgreens Pharmacy No. 5357 located at 9300 East Gregory, Raytown, Missouri. Licensee misappropriated the following controlled substances from Store 5357:

- 924 Hydrocodone/apap 10/325
- 397 Hydrocodone/apap 10/650
- 765 Hydrocodone/apap 10/500
- 264 Alprazolam 2mg

8. On or about April 18, 2008, Licensee was working as an intern pharmacist at the Walgreens Pharmacy No. 1236 at 130205 Highway 71, Grandview, Missouri. Licensee misappropriated 200 Alprazolam 2mg from Store 1236.

9. In an effort to cover up his theft, Licensee price modified prescriptions by changing the price to zero so he could obtain a receipt and the computer system would show the prescription as

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sold thereby reducing the number of dosage units for that medication in the pharmacy's inventory system. Licensee price modified prescriptions under the names A.J., S.M. and B.T. at Store 4210.

10. Licensee also forged prescriptions so the drugs he diverted would not show up as short on the pharmacy's inventory records.

11. Total losses were calculated by Walgreens to be 5000 tablets.

12. Licensee illegally obtained and sold the controlled substances for his financial gain.

13. Licensee was terminated from Walgreens on April 18, 2008 for theft of controlled substances.

14. Licensee was terminated from UMKC's Doctor of Pharmacy Program on May 19, 2008.

15. The U.S. Drug Enforcement Administration is investigating and federal charges are pending.

16. Licensee forged prescriptions and then dispensed controlled substances without a prescription issued by an authorized prescriber.

17. Licensee did not possess a valid prescription for any of the controlled substances he diverted for his personal use.

18. No valid prescription existed for any of the price modified prescriptions Licensee altered for A.J., S.M and B.T.

19. Licensee's conduct as alleged herein constitutes gross negligence, misconduct, misrepresentation, and dishonesty in the performance of his duties as an intern pharmacist.

20. At the time of the events alleged herein, Licensee had formed a relationship of professional trust and confidence with Walgreens in that his employer relied upon the professional expertise of Licensee to ensure that all applicable state and federal laws and regulations regarding the practice of pharmacy were followed.

21. Licensee's conduct as alleged herein violated his employer's professional trust and confidence.

22. At the time of the events alleged herein, Licensee had formed a relationship of professional trust and confidence with his clients in that his clients relied upon the professional expertise of Licensee to ensure that all applicable state and federal laws and regulations regarding the practice of pharmacy were followed.

23. Licensee's conduct as alleged herein violated his clients' professional trust and confidence.

24. Section 195.202, RSMo 2000, states in relevant part: "1. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance."

25. Section 195.180, RSMo 2000, states in relevant part:

1. A person may lawfully possess or have under his control a controlled substance if such person obtained the controlled substance directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of a practitioner's professional practice or except as otherwise authorized by sections 195.005 to 195.425.

26. Licensee's conduct as alleged herein violates §§ 195.202 and 195.180, RSMo.

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27. Title 21 U.S.C. § 844(a) states in relevant part:

(a) Unlawful acts; penalties

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, . .

28. Licensee's conduct as alleged herein violates 21 U.S.C. § 844(a).

29. Section 195.060, RSMo 2000, states in relevant part:

1. Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute, provided that the controlled substances listed in Schedule V may be sold without prescription in accordance with regulations of the department of health. . . . The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this law. . . .

30. Licensee's conduct as alleged herein violates § 195.060, RSMo.

31. Section 195.070, RSMo 2000, states in relevant part: "1. A physician, podiatrist, dentist, or a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, RSMo, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense controlled substances"

32. Licensee's conduct as alleged herein violates § 195.070, RSMo.

33. Title 21 U.S.C. § 829 states in relevant part:

(b) Schedule III and IV substances

Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), may be dispensed without a written or oral prescription in conformity with section 503(b) of that Act (21 U.S.C. 353(b)). . . .

34. Licensee's conduct as alleged herein violates 21 U.S.C. § 829.

35. Federal regulation 21 C.F.R. § 1306.21 states in relevant part:

(a) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV, or V which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist containing all information required in Sec. 1306.05, except for the signature of the practitioner.

36. Licensee's conduct as alleged herein violates 21 C.F.R. § 1306.21.

37. Title 21 U.S.C. § 331 states in relevant part:

The following acts and the causing thereof are prohibited:

....

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

38. Title 21 U.S.C. § 353(b) states in relevant parts:

(b) Prescription by physician; exemption from labeling and prescription requirements; misbranded drugs; compliance with narcotic and marihuana laws

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(1) A drug intended for use by man which -

(A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(B) is limited by an approved application under section 355 of this title to use under the professional supervision of a practitioner licensed by law to administer such drug;

shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

39. Pursuant to 21 U.S.C. § 353, Licensee's conduct as alleged herein violates constitutes misbranding.

40. Licensee's conduct as alleged herein violates 21 U.S.C. § 331 and 21 U.S.C. § 353.

41. Section 338.100, RSMo 2000, states in relevant part:

1. Every permit holder of a licensed pharmacy shall cause to be kept in a uniform fashion consistent with this section a suitable file in which shall be preserved, for a period of not less than five years, the original or order of each drug which has been compounded or dispensed at such pharmacy, according to and in compliance with standards provided by the board, . . . The pharmacist in charge shall be responsible for complying with the permit holder's record-keeping system in compliance with this section. . . .

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42. Licensee's conduct as alleged herein violates § 338.100, RSMo.

43. Title 21 U.S.C. § 827 states in relevant part:

(a) Inventory

Except as provided in subsection (c) of this section -

....

(3) on and after May 1, 1971, every registrant under this subchapter manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him, except that this paragraph shall not require the maintenance of a perpetual inventory.

44. Licensee's conduct as alleged herein caused the registrant of the pharmacy to be in violation of 21 U.S.C. § 827.

45. Federal regulation 21 C.F.R. § 1304.21(a) states in relevant part:

(a) Every registrant required to keep records pursuant to Sec. 1304.03 shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him/her, except that no registrant shall be required to maintain a perpetual inventory.

46. Licensee's conduct as alleged herein caused the registrant of the pharmacy from which he diverted controlled substances to be in violation of 21 C.F.R. § 1304.21(a).

47. Cause exists for Petitioner to take disciplinary action against Respondent's license pursuant to § 338.055.2(5), (6), (13), (15), and (17), RSMo, which states in relevant parts:

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JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, as amended.

1. Licensee's intern license to practice pharmacy in the State of Missouri, License No. 2007024408 is hereby **VOLUNTARILY SURRENDERED and Licensee cannot reapply for licensure for a period of seven (7) years from the effective date of this Agreement.**

2. The parties to this Agreement understand that the Board of Pharmacy will maintain this settlement agreement as an open and public record of the Board as provided in Chapters 338, 610, and 620, RSMo.

3. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

4. Licensee, together with his heirs and assigns, and his attorney(s), do hereby waive, release, acquit, and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims

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pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

5. Licensee understands that he may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

6. If Licensee requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE



ASHTON FREEMAN

License No. 2007024408

Date

10-20-08

BOARD



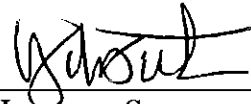
THOMAS GLENSKI

Chief Inspector

State Board of Pharmacy

Date

11-6-08



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